313 U.S. 593

Office - Supreme Court
FILED
MAY 5 1941
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

62

No. 1019

313 US #4
CEN-CIT

THE CENTRAL NATIONAL BANK OF CLEVELAND,
TRUSTEE,
Petitioner,

vs.

ROBERT O'BRIEN, EXECUTOR OF THE ESTATE OF JAMES O. MILLS, DECEASED.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO, AND BRIEF IN SUPPORT THEREOF.

DORR E. WARNER,
Counsel for Petitioner.

ORLIN F. GOUDY,
Of Counsel.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Statement of the matter involved	2
Facts and issues	2
Rulings of the Common Pleas Court which were affirmed by the Court of Appeals	5
Questions presented	6
Articles of the Constitution and Statutes involved	6
Reasons relied on for the allowance of the writ	7
Prayer for writ	9
Brief in support of petition	10
Opinion of the Federal Court	10
Opinions below	10
Jurisdiction of this Court	10
Statement of the case	14
Specification of assigned errors	14
Summary of argument	14
Argument	15
I. The release and discharge of its claim for rent in the Building Company proceeding, did not release the liability of the guarantor	15
II. The decree of the Federal Court specifically contains a provision that the release and discharge of the claim for rent shall not be construed as releasing the liability of the guarantor, and the provision is not a nullity	16
Appendix—Excerpts from cases cited	23
—Articles of Constitution involved	24
—Statutes involved	24

(32180

Page

TABLE OF CASES CITED.

California v. *Deseret Water, etc., Co.*, 243 U. S. 415 11
Chesapeake & Ohio Ry. Co. v. *McCabe*, 213 U. S. 207 11
Continental Illinois National Bank and Trust Co. v. *Chicago, Rock Island & Pacific Ry. Co.*, 294 U. S. 648 21
Diversey Building Co., In re, 86 F. (2d) 456 15
Dowell v. *Applegate*, 152 U. S. 327 ..... 8, 11, 19
Dupasseur v. *Rochereau*, 21 Wall. 130 19
Durfee Trust Co. v. *Steiger*, 296 Mass. 136 ..... 7, 15
Embry v. *Palmer*, 107 U. S. 3 19
Forsyth v. *Hammond*, 166 U. S. 506 ..... 8, 19
Harding, Ex parte, 219 U. S. 363 ..... 8, 19
Hancock National Bank v. *Farnham*, 176 U. S. 640 19
Local Loan Co. v. *Hunt*, 292 U. S. 234 21
Louisville, N. A. & C. Ry. Co. v. *Louisville Trust Co.*, 174 U. S. 552 21
Margolies v. *Kleidman*, 266 Fed. 203 16
McCormick v. *Market Bank*, 165 U. S. 538 10
Nine North Church St., In re, 82 F. (2d) 186 ..... 7, 15, 21
Nutt v. *Knut*, 200 U. S. 13 11
Penn Casualty Co. v. *Pennsylvania*, 294 U. S. 189 11
Phoenix Fire and Marine Ins. v. *Tennessee*, 161 U. S. 174 11
Pittsburgh, &c., Ry. v. *Loan & Trust Co.*, 172 U. S. 493 11
Seabury v. *Green*, 294 U. S. 165 10
Stoll v. *Gottlieb*, 305 U. S. 165 ..... 8, 11, 19, 21
Supreme Lodge, Knights of Pythias v. *Meyer*, 265 U. S. 30 19
U. S. ex rel. Adler v. *Hammond*, 104 Fed. 862 16
Union Trust Co. v. *Willsea*, 275 N. Y. 164 ..... 7, 15
West Side Belt R. R. Co. v. *Pittsburgh Construction Co.*, 219 U. S. 92 11

STATUTES CITED.

Constitution of the United States:
Article I, Sec. 8, Subsec. Fourth 19, 24
Article III, Sec. 2 ..... 19, 24

Page
Article IV 24
Judicial Code, Section 237(b), as amended (28 U. S. C A. 344(b)) 10
U. S. C., 1926, Title 11:
Ch. 1, Sec. 1(8) and (12) (p. 24) (Sec. 1(8) and 1(12) Bankruptcy Act) 16, 19, 20, 24
Ch. 2, Sec. 11 (p. 43) (Sec. 2, Bankruptcy Act) 20, 24
U. S. C., 1934, Title 11:
Ch. 3, sec. 34 (p. 143) (Sec. 16, Bankruptcy Act) 15, 20, 25
Ch. 3, Sec. 35 (p. 150) (Sec. 17, Bankruptcy Act) 15, 20, 25
Ch. 8, Sec. 206 (p. 1057) (Sec. 77-B (a) Bankruptcy Act) 20, 25
Ch. 8, Sec. 207(a) (p. 1057) (Sec. 77-B (a) Bankruptcy Act) 20, 25
Ch. 8, Sec. 207(b) (p. 1059) (Sec. 77-B (b) Bankruptcy Act) 20, 26
Ch. 8, Sec. 207(g) (p. 1067) (Sec. 77-B (g) Bankruptcy Act) 20, 26
Ch. 8, Sec. 207(h) (p. 1067) (Sec. 77-B (h) Bankruptcy Act) 20, 27
Ch. 8, Sec. 207 (j) (p. 1068) (Sec. 77-B (j) Bankruptcy Act) 20, 27
Ch. 8, Sec. 207(o) (p. 1070) (Sec. 77-B (o) Bankruptcy Act) 21, 27

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1019

THE CENTRAL NATIONAL BANK OF CLEVELAND, TRUSTEE,

Petitioner,

vs.

ROBERT O'BRIEN, EXECUTOR OF THE ESTATE OF JAMES O. MILLS, DECEASED.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO, AND BRIEF IN SUPPORT THEREOF.

Petition.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, The Central National Bank of Cleveland, Trustee, by its attorney, respectfully prays that a writ of certiorari issue to review the final judgment of the Court of Appeals of Franklin County, Ohio (R. 230), being the highest court of said State in which a decision could be had, the decision of said court having been entered on December 6, 1940 (R. 230). By its decision the said Court of Appeals

affirmed the judgment of the Court of Common Pleas of Franklin County, Ohio (R. 230).

The petitioner duly filed in the Supreme Court of Ohio, a motion directing the Court of Appeals to certify its record for the purpose of reviewing the judgment of said Court of Appeals (R. 232), and on February 5, 1941, it was overruled (235); an application for rehearing was duly filed and on February 26, 1941, it was overruled (235).

The Common Pleas Court rendered judgment for the respondent on two grounds (216):

> 1. That the release and discharge of its claim for rent against the Restaurant Company in the proceeding to reorganize the Building Company under Section 77-B of the Bankruptcy Act released the liability of respondent who had guaranteed payment of said claim.
>
> 2. That the proviso in the decree confirming the plan of reorganization of the Building Company that the release and discharge of said claim should not release the guarantor was a nullity.

Statement of Matter Involved.

Facts and Issues:

Your petitioner brought suit in the Common Pleas Court of Franklin County, Ohio, against James O. Mills, now deceased (Robert O'Brien, Executor of the Estate of James O. Mills was substituted as defendant in the action). The pertinent part of the action was to recover delinquent rent due from James O. Mills who had guaranteed payment of rent when due under a lease made between the Smythe Building Company, herein called the Building Company, as lessor, and The Mills-Cleveland Restaurant Company, herein called the Restaurant Company, as lessee (2), said lease having been assigned and transferred by the Building Company to The Guardian Trust Company, Trustee (pred-

ecessor trustee of your petitioner), as additional security for the payment of $400,000 par value of bonds issued and sold to the public by the Building Company (50). Before this action was brought, the petitioner's rights in respect of said guaranty was determined by the plan of reorganization of the Building Company (96), and the decree of the United States District Court, Northern District of Ohio, Eastern Division, confirming said plan in proceedings for the reorganization of said Company under Section 77-B of the Bankruptcy Act, as amended (144). The respondent set up and claimed as a complete defense to the suit in the Common Pleas Court, the proceedings in the Federal Court to reorganize both companies which showed:

1. That respondent unconditionally guaranteed payment of rent when due under a lease made between the Building Company as lessor, and the Restaurant Company as lessee (p. 48, par. 2).

2. That the liability of the Restaurant Company to the Building Company for rent was discharged in proceedings to reorganize the Restaurant Company under Section 77-B of the Bankruptcy Act (138).

3. That the Building Company was the sole creditor of the Restaurant Company affected by the plan of reorganization of the Restaurant Company (195).

4. That the liability of the Restaurant Company to the Building Company was discharged in the proceeding to reorganize the Building Company under Section 77-B of the Bankruptcy Act (145).

5. That in the proceeding to reorganize the Building Company, the question of whether the effect of the confirmation of the plan of reorganization and its *execution* was to release the guarantor was determined by the United States District Court (144).

6. That the guarantor was the president of both companies and the owner of practically all of the stock of both companies (190), and holders of all the stock of the

Building Company, except the holder of two shares, accepted the plan (142).

7. That pursuant to the plan of the Building Company and the decree confirming it, the Building Company and the Trustee *executed* a release and discharge of said claim for rent (136).

8. That the plan of the Building Company was *executed* and consummated in accordance with the terms and orders of the court, and it was approved by the court (145).

9. That the Building Company was discharged from all its debts except as provided by the plan (198).

The respondent claimed that the release and discharge of the claim for rent in the Building Company proceeding released the liability of the guarantor. Your petitioner claimed first, that the proceeding did not release his liability, and second, that the decree of the District Court confirming the plan of the Building Company was not in part a nullity.

In the first trial the Common Pleas Court rendered judgment for respondent on two grounds:

1. That the discharge of the liability of the Restaurant Company in the proceedings for its reorganization released the liability of the guarantor.

2. That in an action brought by the petitioner against the guarantor to collect defaulted rent, the fact that the obligation for which the lease was pledged to the petitioner was not in default, barred the action against the guarantor.

The Court of Appeals reversed the judgment of the Common Pleas Court on the grounds (201):

1. That the discharge of the liability of the Restaurant Company in the proceedings for its reorganization did not release the liability of the guarantor, and

2. That in an action brought by the petitioner against the guarantor to collect defaulted rent, the fact that the obligation for which the lease was pledged to the petitioner was not in default, did not bar the action against the guarantor,

and remanded the cause for a new trial (215).

In the second trial the Common Pleas Court again rendered judgment for respondent (225), and on appeal the Court of Appeals affirmed its judgment (230) on the grounds stated in the opinion of the Common Pleas Court (228), but affirmed the judgment in respect of the liability of respondent as principal obligor (lessor), on another lease on a ground involving a State question and not involving a Federal question (228), and, accordingly, that part of this action in respect of his liability as principal obligor is not made a part of this petition for a writ of certiorari.

Rulings of the Common Pleas Court which were affirmed by the Court of Appeals:

The Common Pleas Court held that the case turned upon the effect of the release of the claim for rent. Was the release in the eyes of the law voluntary or involuntary? (219). The Court decided that the release was voluntary, for reasons necessarily involving two Federal questions (216):

1. Did the release and discharge of the claim for rent in the proceedings to reorganize the Building Company release the liability of the guarantor?

2. Is that portion of the decree in the proceedings to reorganize the Building Company providing that the liability of the guarantor should not be released, but should be reserved for the benefit of bondholders, a nullity?

The Court of Appeals affirmed the judgment of the Common Pleas Court, (230) and thereby deprived petitioner of

a right or immunity claimed under a decree of the United States District Court and the Constitution and Statutes of the United States.

The questions presented are clear cut:

1. Did the release and discharge of the claim for rent in the proceedings to reorganize the Building Company release the liability of the guarantor?

2. Is that portion of the decree of the District Court in said proceedings, which provided that the confirmation and *execution* of the plan should not release the liability of the guarantor a nullity?

Articles of the Constitution and Statutes Involved:

The Articles of the Constitution and the Statutes involved are listed below, and extracts thereof are set out in the Appendix:

Constitution, Article I, Sec. 8, Subsec. Fourth; (24).
Article III, Sec. 2; (24).
Article IV, (24).

U. S. C. 1926, Title 11:

Ch. 1, Sec. 1 (8) and (12) (p. 24) (24).
Ch. 2, Sec. 11 (p. 43) (24).

U. S. C. 1934, Title 11:

Ch. 3, Sec. 34 (p. 143 (25).
Ch. 3, Sec. 35 (p. 150) (25).
Ch. 8, Sec. 206 (p. 1057) (Sec. 77-B (a) Bankruptcy Act) (25).
Sec. 207 (a) (p. 1057 (Sec. 77-B (a) Bankruptcy Act) (25).
Sec. 207 (b) (p. 1059) (Sec. 77-B (b) Bankruptcy Act) (26).
Sec. 207 (g) (p. 1067) (Sec. 77-B (g) Bankruptcy Act) (26).
Sec. 207 (h) (p. 1067) (Sec. 77-B (h) Bankruptcy Act) (27).

Sec. 207 (j) (p. 1068) (Sec. 77-B (j) Bankruptcy Act) (27).
Sec. 207 (o) (p. 1070) (Sec. 77-B (o) Bankruptcy Act) (27).

Reasons Relied On for the Allowance of the Writ.

The reasons relied on for the allowance of the writ are two:

1. The Federal question raised by the decision of the State court that the release and discharge of a claim owing a corporation in a proceeding for its reorganization, altered the liability of the guarantor of the claim, was decided by the State court in a way not in accord with the decision of the Federal court in the Building Company proceeding, and not in accord with the applicable principles decided in other Federal courts; Re *Nine North Church St.*, 82 F. (2d) 186 (2 C. C. A.); and not in accord with the applicable principles declared by the decisions of the highest courts of other States; *Durfee Trust Co.* v. *Steiger*, 296 Mass. 136; *Union Trust Co.* v. *Willsea*, 275 N. Y. 164, and has not heretofore been determined by this Court.

The State court construed the Bankruptcy Act and held that the release and discharge of said claim released the liability of the guarantor. The decision of the State court is absolutely not in accord with the decision of the Federal court in the proceedings to reorganize the Building Company, and is not in accord with the applicable principles of the decisions of other Federal courts and the highest courts of other States cited in the preceding paragraph.

2. The Federal question raised by the decision of the State court that a decree of the District Court in a proceeding to reorganize a corporation that the release and discharge of a claim owing to it should not release and discharge the liability of the guarantor of the claim, was a

nullity, was decided by the State court in a way not in accord with the decision of the Federal court in the Building Company proceeding, and probably not in accord with the controlling principles declared by the decisions of this Court in *Dowell* v. *Applegate,* 152 U. S. 327; *Ex Parte Harding,* 219 U. S. 363, and *Stoll* v. *Gottlieb,* 305 U. S. 165.

The State court failed to give proper effect to a decree of a Federal Court; it held that that part of the decree of the Federal court in the proceeding to reorganize the Building Company providing that the confirmation and *execution* of the plan should not be construed as releasing and discharging the liability of the guarantor, was a nullity.

The State court's decision on the controlling principles involved is probably not in accord with the decisions cited in the second preceding paragraph.

The decision of the State court in this action that the release and discharge of the claim for rent, in proceedings for reorganization of a corporation, releases the liability of the guarantor, is one way and the decision of the District court in the proceedings to reorganize the Building Company, and the applicable principles of the decisions of other Federal courts and the highest courts of other States is the other.

The decision of the State court in this action that a part of the decree of the District court is a nullity is one way, and the controlling principles declared in its decisions by this Court are the other.

All the unfortunate possibilities of conflict and collision which might arise from these adverse decisions on both questions involved herein offer the strongest inducement for this Court to exercise its authority to finally settle both of these questions. *Forsyth* v. *Hammond,* 166 U. S. 506, 515; *Ex Parte Harding,* 219 U. S. 363, 369.

Section 77-B of the Bankruptcy Act as amended, is now Chapter X of the Bankruptcy Act (The Chandler Act), and

is a comparatively new remedial statute, the scope of which has not been fully determined by this Court. A great many reorganization plans, and decrees confirming them, involving large sums of money, property of great value and many persons through the United States, have been and are being involved in actions in the State courts.

If the decision of the courts of Ohio is allowed to stand unreversed, and is followed hereafter, it will lead to great confusion and misapprehension in respect of whether the liability of a guarantor is altered by the release and discharge of a claim in proceedings for reorganization of a corporation, and will lead to a disregard for the decrees of the Federal courts. It opens the door to a successful attack on every plan, order and decree of the Federal courts in proceedings under Section 77-B, the applicable parts of which are now contained in Chapter X of the Bankruptcy Act (Chandler Act), with all the unfortunate consequences that must follow.

WHEREFORE, it is respectfully submitted that the prayer for a writ of certiorari to review the judgment of the Court of Appeals of Franklin County, Ohio, should be granted.

BRIEF.

The Opinion of the Federal Court.

The opinion of the Special Master whose report was confirmed by the United States District Court in the proceeding to reorganize the Building Company appears at page 124 of the Record filed herein.

Opinions Below.

The opinion of the Court of Appeals on the first appeal appears at page 201 of the Record herein, and is reported in 62.0 App. 413.

The opinion of the Common Pleas Court on the second trial appears at page 216, and the opinion of the Court of Appeals on the second appeal at page 227 of the Record herein. The pertinent part appears at page 228.

Jurisdiction of This Court.

This Court has jurisdiction of this cause under Section 237 (b) Judicial Code of the United States, as amended (28 U. S. C. A. Sec. 344 (b)).

The decision of the State court that the liability of the guarantor was altered and he was released in the proceeding, necessarily raised a Federal question and deprived the petitioner of a right or immunity claimed under the Constitution and Statutes of the United States. In this situation this Court has jurisdiction. *McCormick* v. *Market Bank,* 165 U. S. 538; *Seabury* v. *Green,* 294 U. S. 165.

The State court construed the Bankruptcy Act and declared that as a result of the proceedings to recognize the Building Company the guarantor was released from liability and deprived the petitioner of a right or immunity claimed under the Constitution and Statutes of the United States.

The refusal of the State court to give proper effect to the decree of the Federal court necessarily raised a Federal

question, and deprived the petitioner of a right or immunity claimed under the decree of a Federal court. In this situation this Court has jurisdiction. *Dowell* v. *Applegate,* 152 U. S. 327; *Penn Casualty Co.* v. *Pennsylvania,* 294 U. S. 189; *Stoll* v. *Gottlieb,* 305 U. S. 165.

The State court refused to give proper effect to a decree of the Federal court and declared that it was in part null and void, and thereby deprived the petitioner of a right or immunity claimed under a decree of a Federal court.

The refusal of the State court to give full faith, credit and effect to the decree of the Federal court necessarily raised a Federal question (*Phoenix Fire and Marine Insurance* v. *Tennessee,* 161 U. S. 174, 185; *Chesapeake & Ohio Railway Co.* v. *McCabe,* 213 U. S. 207, 215; and *West Side Belt R. R. Co.* v. *Pittsburgh Construction Co.,* 219 U. S. 92, 99); and deprived the petitioner of a right or immunity claimed under the Constitution and the Statutes of the United States. In this situation this Court has jurisdiction (*Nutt* v. *Knut,* 200 U. S. 13, 18-19; *Pittsburgh &c. Railway* v. *Loan & Trust Co.,* 172 U. S. 493, 507-510).

The State court declared a part of the decree a nullity and thereby deprived petitioner of a right or immunity claimed under the Constitution and Statutes of the United States.

The determination of these questions by the State court brings this case within the jurisdiction of this Court. (*California* v. *Deseret Water, etc., Co.,* 243 U. S. 415, 417.)

At the inception of this action the respondent filed an answer in the trial court in which he specifically set up the proceedings in the District Court of the United States for the Northern District of Ohio, Eastern Division, for the reorganization of the Restaurant Company and the Building Company under Section 77-B of the Bankruptcy Act (6). The petitioner filed a reply in which it admitted the reorganization proceedings of both companies (100). At the trial inter alia the decree confirming the plan of the Restau-

rant Company was offered in evidence (134). The report of the Restaurant Company on the consummation of the plan was approved by the court. Inter alia the report stated that the Building Company and your petitioner had executed and delivered to the Restaurant Company a release of its claim for rent (140 par. 6), and the decree confirming the plan of the Building Company (141), including that part of the decree of the Building Company determining that the release and discharge of its claim for rent against the Restaurant Company should not be construed as releasing the guarantor from his liability (144). The plan of reorganization of the Restaurant Company (73) and the Building Company (89) inter alia provided that the Restaurant Company should issue certain new stock to the Building Company in full satisfaction of its claim for rent, and the Building Company plan provided that it should assign and transfer said new stock to the predecessor of the petitioner as collateral security for the payment of the aforesaid bonds issued by the Building Company (96); and the Building Company plan authorized the Trustee to release and discharge its claim for rent on receipt of the securities called for by the plan (96).

Pursuant to the plan and the decree of the Court inter alia, the Building Company and your petitioner acknowledged receipt of securities called for by the plan, including $23,000 of bonds owned by respondent which were pledged with your petitioner as additional security for said bonds, as provided in the plan, and released and discharged the Restaurant Company from liability for rent. The *execution* of the plan was reported to the court, and the court approved the report and expressly found that the Building Company plan had been consummated and *executed* in accordance with the terms thereof and of all orders of the Special Master and the court (145, 146, par. 2).

The question of whether the guarantor should be released from liability by the confirmation and *execution* of the plan of the Building Company was specifically determined by the United States District Court upon the objection of a bondholder (126). Nevertheless, the trial court held that he was released (216). The trial court refused to give proper effect to the decree of the Federal court and refused to give full faith, credit and effect to the plan of reorganization of the Building Company and the decree of the District Court on the question of whether or not the guarantor was released from liability, and overruled petitioner's motion for a new trial and dismissed the action and entered judgment against the petitioner for costs (225).

The petitioner appealed to the Court of Appeals of Franklin County, Ohio, which court affirmed the Common Pleas Court (230) on the grounds stated in the opinion of the trial court (228). The petitioner duly filed a motion in the Supreme Court of Ohio directing said Court of Appeals to certify its record (232) and contended that the release and discharge of the claim in the proceeding to reorganize the Building Company did not release the liability of the guarantor (233), and that the provision in the decree of the Federal court that the confirmation and *execution* of the plan should not be construed as releasing the guarantor, was not a nullity (233).

The Common Pleas Court proceeded to construe the Bankruptcy Act and held that the release and discharge of the claim in the proceedings altered the liability of the guarantor and released him therefrom, and held that the decree determining the rights of the petitioner in respect of his guaranty was a nullity (216).

The Court of Appeals affirmed the judgment of the Common Pleas Court (230) on the grounds stated in the opinion of the Common Pleas Court (228), and the Supreme Court overruled the motion of petitioner to require said Court

of Appeals to certify its record for the purpose of reviewing the judgment of said Court of Appeals (235), and overruled the motion of the petitioner for rehearing (235), and thereby the petitioner was deprived of the right or immunity claimed under the Constitution and Statutes of the United States, and claimed under the decree of the Federal court.

Statement of the Case.

The facts in this case are set out in the first opinion of the Court of Appeals (62 Ohio Appeals 413 (201), the opinion of the Common Pleas Court (216), and the second opinion of the Court of Appeals (227).

Specification of Assigned Errors.

The State court erred in holding that the release and discharge of the claim of the Building Company against the Restaurant Company in the proceedings to reorganize the Building Company, released and discharged the liability of the guarantor of said claim.

The State court erred in holding that the decree of the United States District Court was in part a nullity.

The State court erred in its refusal to give proper effect to the decree of the Federal Court.

The State court erred in its refusal to give full faith, credit and effect to the plan of reorganization of the Building Company and the decree of the Federal court which determined the right of the petitioner, thereby depriving petitioner of a right or immunity claimed under the Constitution and States of the United States.

Summary of Argument.

1. The release and discharge of the claim of the Building Company against the Restaurant Company in the proceeding to reorganize the former company under

Section 77-B of the Bankruptcy Act did not release the guaranty of the respondent.

2. The decree of the Federal Court confirming the plan of reorganization of the Building Company, is not in part a nullity.

ARGUMENT.

I.

The release and discharge of its claim for rent in the Building Company proceeding, did not release the liability of the guarantor.

Section 77-B of the Bankruptcy Act (U. S. C. 1934, Title 11, Ch. 3, Sec. 35, page 150, Bankruptcy Act Sec. 17) provides that a discharge in bankruptcy shall release the bankrupt from all provable debts except those enumerated in the Act, but the Bankruptcy Act (U. S. C. 1934, Title 11, Ch. 3, Sec. 34, page 143, Bankruptcy Act, Sec. 16), provides that the liability of a guarantor shall not be altered by the discharge of the bankrupt.

The question of whether in proceedings to reorganize a corporation, a release and discharge of a claim owing to it alters the liability of the guarantor of said claim has not been decided by this Court, but in the proceeding to reorganize the Building Company, the Federal court held that the release and discharge of the claim did not alter the liability of the guarantor, and according to the applicable principles declared by other Federal courts in *Re Nine North Church St.*, 82 F. (2d) 186 (2 C. C. A.), and in *Re Diversey Building Co.*, 86 F. (2d) 456 (7 C. C. A.), and the applicable principles declared by the highest courts of other states in *Durfee Trust Co.* v. *Steiger*, 296, Mass. 136, and in *Union Trust Co.* v. *Willsea*, 275 N. Y. 164, the release and discharge of said claim did not release the guarantor of his liability.

The State court proceeded to construe the law according to its own conception and held that the release and discharge of the claim altered the liability of the guarantor, and he was released therefrom.

The State court held that because the plan of reorganization of the Building Company provided that the claim for rent owing to it by the Restaurant Company should be released and discharged instead of discharged alone, and because the receipt for the securities called for by the plan contained a provision releasing and discharging the claim of the Building Company against the Restaurant Company instead of a discharge alone, the guarantor was released from liability.

The Bankruptcy Act itself (U. S. C. 1926, Title 11, Ch. 1, Sec. 12) p. 24, defines the meaning of the word "discharge". It defines "discharge" as the "release" from all of its provable debts, except those enumerated in the Act.

This Court has not defined the meaning of the word "discharge", but in *U. S. ex rel Adler* v. *Hammond*, 104 Fed. 862, 864 (6 C. C. A.), and in *Margolies* v. *Kleidman*, 266 Fed. 203, 204 (2 C. C. A.), the Court held that the word "release" and the word "discharge" were synonymous. Whether a "release" and "discharge" are synonymous has not been determined by this Court.

II.

The decree of the Federal Court specifically contains a provision that the release and discharge of the claim for rent shall not be construed as releasing the liability of the guarantor, and the provision is not a nullity.

In the Building Company proceeding the court confirmed the plan of the Building Company on the express condition that the guarantor should not be released, and made an order that such a provision be contained in the decree con-

firming its plan. The court made the order after hearing the objection of a bondholder to the plan on the ground that it might be construed as releasing the liability of the guarantor.

In the proceeding to reorganize the Building Company, the court expressed the opinion that as a matter of law the guarantor would not be released as a result of the proceeding (126), but in order to assure the bondholders that his guaranty would not be lost to them, the court made an order that the decree confirming the plan should contain a provision that the confirmation and *execution* of the plan should not be construed as releasing and discharging the liability of the guarantor (126).

Pursuant to the decree of confirmation the plan was duly *executed,* and *inter alia* the securities called for by the plan were delivered to your petitioner, and the Building Company and your petitioner *executed* a receipt for said securities, which receipt contained a release and discharge of the claim of the Building Company against the Restaurant Company for rent. The *execution* of the plan was reported to the court, and the court entered a final decree finding that the plan had been executed in accordance with its terms, and in accordance with the terms and all orders of the Special Master and of the court, and the court approved it and discharged the Building Company form its liabilities, except as provided in the plan.

The bondholder did not appeal from the decree of the court that the confirmation and *execution* of the plan should not release the guarantor. Of course there was no occasion for him to appeal because the decision was in his favor, and yet the State court held that your petitioner, which is Trustee for the bondholders, cannot maintain this action against the guarantor because the decree of the Federal court, reserving his guaranty, is a nullity and he has been released from liability.

Notwithstanding the provision in the decree of the Federal court confirming the plan that the liability of the guarantor should be preserved for the benefit of holders of bonds issued by the Building Company, whether accepting the plan or not, and that the confirmation and *execution* of the plan and the liquidation of its claim for back rent for stock should not be construed as releasing and discharging the liability of the guarantor, and notwithstanding that in its final decree the Federal court found that the plan had been executed in accordance with the plan and the orders of the court, nevertheless the State court proceeded to construe the effect of the said provision in the decree confirming the plan according to its own conception of law, and held that said provision was a nullity.

The State court refused to give proper effect to the decree of the Federal court. The plan of the Building Company provided that the Building Company should receive new stock of the Restaurant Company in liquidation of its claim for rent, and should transfer it to the predecessor of the petitioner as security for bonds held by the public. The plan was silent in respect of the liability of the guarantor, but the decree confirming it contained a provision that its confirmation and *execution* should not be construed as releasing and discharging the liability of the guarantor. The State court utterly disregarded the plan and the decree confirming it, and entered judgment against the petitioner for costs. The court was competent to determine whether the effect of the confirmation and *execution* of the plan should or should not release the liability of the guarantor, and it decided that question. Whether it properly determined the question was beyond the scope of inquiry of the State court. When the decree of a Federal court confirming a plan of reorganization of a corporation is presented as a complete defense to an action, the examining court may inquire into the effect of the plan and may examine

the decree to determine its effect, but when both questions have previously been determined by the Federal court, the examining court is bound by that decision. (*Ex Parte Harding*, 219 U. S. 363, 369; *Dowell* v. *Applegate*, 152 U. S. 327, 340; *Forsythe* v. *Hammond*, 166 U. S. 506, 518.)

State courts cannot deny the correctness of a ruling of the Federal court in construing the Bankruptcy Act, nor can the State courts deny the correctness of the ruling of the Federal court in construing the effect of the confirmation and *execution* of a plan on the liability of a guarantor, which ruling was made a part of the decree confirming the plan.

The proposition that the decrees of the United States District Courts are entitled to the same full faith, credit and effect in the State courts as the judgments of a sister State under Article IV of the Constitution of the United States, has been conclusively determined by this Court in the following cases:

Supreme Lodge, Knights of Pythias v. *Meyer*, 265 U. S. 30, 33;
Hancock National Bank v. *Farnham*, 176 U. S. 640, 645;
Embry v. *Palmer*, 107 U. S. 3, 9;
Dupasseur v. *Rochereau*, 21 Wall. 130;
Stoll v. *Gottlieb*, 305 U. S. 165.

The power of the Federal court in this case rests upon—

Article I, Section 8, Subsec. Fourth of the Constitution, which gives Congress power to establish laws on the subject of bankruptcy throughout the United States;

Article III, Section 2, of the Constitution, which provides that the judicial power shall extend to all cases in law or in equity arising under the Constitution and laws of the United States;

U. S. C. 1926, Title 11, Ch. 1, Sec. 1 (8), p. 24 (Bankruptcy Act, Sec. 1 (8)), which makes District Courts of the United States courts of bankruptcy;

U. S. C. 1926, Title 11, Ch. 1, Sec. 1 (12), p. 24 (Bankruptcy Act, Sec. 1 (12)), which defines "discharge" as meaning the "release" of the bankrupt.

U. S. C. 1926, Title 11, Ch. 2, Sec. 11, p. 43 (Bankruptcy Act, Sec. 2), which vests the courts of bankruptcy with such power as may be necessary for the enforcement of the Bankruptcy Act;

U. S. C. 1934, Title 11, Ch. 3, Sec. 34, p. 143 (Bankruptcy Act, Sec. 16), which provides that the liability of the guarantor was not altered by the discharge of the bankrupt;

U. S. C. 1934, Title 11, Ch. 3, Sec. 35, p. 150 (Bankruptcy Act, Sec. 17), which provides that a discharge in bankruptcy shall release the bankrupt from all provable debts except those enumerated in the Act;

U. S. C. 1934, Title 11, Ch. 8, Sec. 206, p. 1057 (Sec. 77-B, Bankruptcy Act), which provides that the courts of bankruptcy shall have original jurisdiction in proceedings under Section 77-B of the Bankruptcy Act;

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (a), p. 1057 (Sec. 77-B (a)), Bankruptcy Act, which provides that the court shall have and may exercise all powers which a Federal court would have had it appointed a receiver in equity;

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (b), p. 1059 (Sec. 77-B (b)), Bankruptcy Act, which shows what provisions may be included in a plan of reorganization;

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (g), p. 1067 (Sec. 77-B (g)), Bankruptcy Act, which provides that upon confirmation the provisions of the plan shall be binding upon the debtor, stockholders and the creditors;

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (h), p. 1067 (Sec. 77-B (h)), Bankruptcy Act, which provides that upon confirmation of the plan the debtor shall have full power to execute it, subject to the supervision of the judge;

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (j), p. 1068 (Sec. 77-B (j)), Bankruptcy Act, which provides that a certified

copy of the decree confirming the plan shall be evidence of the jurisdiction of the court and the regularity of its proceedings; and

U. S. C. 1934, Title 11, Ch. 8, Sec. 207 (o), p. 1070 (Sec. 77-B (o)), Bankruptcy Act, which provides that the jurisdiction and powers of the court shall be the same as in voluntary bankruptcy proceedings.

This Court has held that bankruptcy proceedings are equity proceedings (*Local Loan Co.* v. *Hunt*, 292 U. S. 234, 240); that proceedings under Section 77 of the Bankruptcy Act are proceedings in equity (*Continental Illinois National Bank and Trust Co.* v. *Chicago, Rock Island & Pacific Railway Co.*, 294 U. S. 648, 676); and that a guaranty may be cancelled in equity (*Louisville, N. A. & C. Railway Co.* v. *Louisville Trust Co.*, 174 U. S. 552, 567); *Stoll* v. *Gottlieb*, 305 U. S. 165.

There is no fixed form that a plan of reorganization must take. The court of original jurisdiction must consider and weigh all the rights and equities involved, and if it finds the plan is fair, equitable and feasible, is proposed in good faith and is in compliance with the provisions of subdivision (b) of Section 77-B of the Bankruptcy Act, it may, in the exercise of its equitable discretion, confirm it and make it binding upon all parties involved. But relief of the guarantor is not essential to the reorganization of a corporation under said Act. *In re Nine North Church St.*, 82 F. (2d) 186.

Conclusion.

(1) The State court decided that the release and discharge of the claim of the Building Company against the Restaurant Company in the proceeding to reorganize the Building Company under Section 77-B of the Bankruptcy Act released the liability of the guarantor. It decided an important question of Federal law not heretofore decided

by this Court, but in a way not in accord with the decision of the Federal court in said proceeding, and probably not in accord with the applicable principles declared by other Federal courts and the highest courts of other States.

(2) The State court decided that the proviso in the decree that the confirmation and *execution* of the plan of the Building Company should be construed as not releasing the liability of the guarantor was a nullity. It decided another important Federal question in a way probably not in accord with the applicable decisions of this Court. It opened the door to successful attack on every plan, order and decree of the Federal courts in proceedings under Section 77-B of the Bankruptcy Act, the pertinent sections of which are now contained in the Chandler Act. If the proceedings of the Federal courts may be successfully attacked in the State courts, there will be no end to litigation and the result will be extreme uncertainty and confusion as to rights and privileges under the Constitution and statutes of the United States and under decrees of Federal courts.

Your petitioner respectfully submits that the judgment of the Court of Appeals of Franklin County, Ohio, and the judgment of the Common Pleas Court of Franklin County, Ohio, should be reversed and the cause remanded for further proceedings according to law.

DORR E. WARNER,
Attorney for Petitioner,
1101 Hippodrome Bldg.,
Cleveland, Ohio.

ORLIN F. GOUDY,
Counsel.